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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-eighth session

SUMMARY RECORD OF THE 1135th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 29 February 1996, at 3 p.m.

Chairman: Mr. BANTON

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 6) (continued)

Twelfth and thirteenth periodic reports of the Russian Federation (CERD/C/263/Add.9; HRI/CORE/1/Add.52) (continued)

1. At the invitation of the Chairman, Mr. Kolossovsky, Mr. Chernenko, Mr. Zorin, Mr. Davydov, Mr. Demidov, Mr. Parshikov, Mr. Tcherbak, Mr. Malquinov, Ms. Sulitskaya, Mr. Boitchenko, Mr. Dolgoborodov and Mr. Tchoumarev (Russian Federation) resumed their places at the Committee table.

2. Mr. van BOVEN expressed concern at the system of residence permits (propiskas), which discriminated against members of the population who could not afford to buy property. It also contravened international human rights standards and should be abolished. It was unfortunate that the report of the Russian Federation failed to explain what was being done to protect the most vulnerable sectors of society at a time of economic crisis and transition to a market economy.

3. Investigations were apparently being carried out with a view to prosecuting persons guilty of human rights violations in Chechnya. It would be useful to the Committee if information on such prosecutions and on reparations to victims could be included in the next periodic report. The Committee had met with representatives of the Ingush population, who claimed, inter alia, that 40,000 displaced ethnic Ingush from the Prigorodny district were unable to return to their homes which were standing empty, while 20,000 others had returned but found themselves with no right to security, education, medical care or freedom of movement. He asked the delegation to respond to those claims.

4. Mr. de GOUTTES said that, given the gravity of the situation in North Ossetia, Ingushetia and Chechnya, the Committee should consider asking for additional interim information to be presented at the next session. The relationship between the Presidential Human Rights Commission and the office of the Commissioner for Human Rights was unclear, and he asked whether Mr. Kovalev was still active in either of the two institutions. Finally, be requested information on the CIS Convention of 26 May 1995 on human rights and fundamental freedoms. Did it contain provisions specifically prohibiting racial and ethnic discrimination, and how did it stand in relation to the International Convention on the Elimination of All Forms of Racial Discrimination and the European Convention on Human Rights?

5. Mr. YUTZIS said that the delegation's replies had not dispelled his concern that article 4 of the Convention was not being fully applied. Details on its application should therefore be provided

6. The CHAIRMAN said that there would be no need to request additional interim information on the situation in Chechnya, North Ossetia and Ingushetia, since the next periodic report of the Russian Federation was due on 6 March 1996.

7. Mr. CHERNENKO (Russian Federation) said that the delegation recognized that the Ingush-Ossetian conflict required coordinated efforts on the part of the federal authorities. Following the dramatic events of 1992, a high-level committee had been set up, whose efforts had helped to minimize the number of victims claimed by the conflict. The problem of the return of displaced persons belonging to the Ingush population needed to be addressed at the local level. Approximately 40,000 Ingush had the right to return to their homeland.

8. Mr. KOLOSSOVSKY (Russian Federation) said it was true that the residence permit (propiska) system was not compatible with either the Russian Federation's obligations under international human rights instruments or the national Constitution. However, there were long-standing objections to its replacement by a system requiring only registration with the authorities. There was no discrimination in the accommodation licensing system and it appeared that many non-Russians had taken advantage of the rights provided therein.

9. The problem of internally displaced persons and refugees was most acute in the major cities, such as Moscow and Saint Petersburg whose success in promoting community welfare would depend on the lightening of their economic burden. The President of the Russian Federation had recently stressed that social problems required urgent attention following completion of the first stage of economic reform.

10. Mr. Kovalev was no longer a member of the Presidential Human Rights Commission. The relationship between the Commission and the office of the Commissioner for Human Rights would be defined when the latter became operational.

11. Article 3 of the CIS Convention on human rights dealt with non-discrimination and that subject was also covered by the CIS Convention guaranteeing the rights of persons belonging to national minorities. All CIS instruments would be applied without detriment to other international instruments. Against the backdrop of a difficult transitional period, the authorities were tempering their enthusiasm for reform with restraint and moderation.

12. Mr. Kolossovsky, Mr. Chernenko, Mr. Zorin, Mr. Davydov, Mr. Demidov, Mr. Parshikov, Mr. Tcherbak, Mr. Malquinov, Ms. Sulitskaya, Mr. Boitchenko, Mr. Dolgoborodov and Mr. Tchoumarev (Russian Federation) withdrew.

Sixth and seventh periodic reports of Colombia (CERD/C/257/Add.1; HRI/CORE/1/Add.56)

13. At the invitation of the Chairman, Mr. González, Ms. Carrizosa and Mr. Murillo Martínez (Colombia) took places at the Committee table.

14. Mr. GONZALEZ (Colombia) said that Colombia was in the process of strengthening the rights of the indigenous and Afro-Colombian populations. The Political Constitution, enacted in 1991, provided for a participatory democracy. It also recognized the ethnic and cultural diversity of the country and ensured that Colombia was a social State based on the rule of law. It provided legal guarantees against racial or ethnic discrimination and

enabled the Government to promulgate legislation specifically to protect the rights of the Black and indigenous communities with regard to land and other matters. It recognized the full political, administrative and legal autonomy of indigenous peoples.

15. The National Development Plan known as the "Social Leap Forward" for the years 1994 to 1998, provided for innovative social investment to promote the development of remote communities. The indigenous and Black communities, which were considered part of the least favoured segment of the population, enjoyed special protection within the Social Solidarity Network. It was planned to involve government bodies and non-governmental organizations in programmes geared to promoting awareness of the importance of ethnic and cultural diversity in pursuit of sustainable development.

16. Recent progress in the advancement of the Afro-Colombian communities had been satisfactory; more had been done in the past 5 years than in the previous 450, since the first slaves had been brought into the country. Law No. 70 of 1993 made substantial provision for restructuring, including the establishment of a special electoral district to return two Black members to Parliament for the first time. A Directorate of Black Community Affairs had been established in the Ministry of the Interior; the Director was present at the current meeting. Measures had also been taken to protect natural resources - for example, through the suspension of environmentally damaging mining operations - on the lands of the indigenous and Afro-Colombian communities. Information on such measures had been provided to the Committee. In the five years since the promulgation of the new Constitution, the indigenous communities had been given the means to participate in all aspects of the national life, although much remained to be done.

17. At the conclusion of his term as Head of the Permanent Mission of Colombia to the United Nations Office at Geneva, he found it gratifying to be able to report good progress on an issue as important as the advancement of the Black and indigenous national communities.

18. Mr. MURILLO MARTINEZ (Colombia) said that the recent constitutional and structural reforms reflected the recognition of the contribution made by the Black and indigenous peoples to the national identity. The new Political Constitution provided for legislation and practical measures to secure equality of opportunity for all groups. It was likewise important for a State based on the rule of law to recognize the right to be different, without losing sight of the principle of equity. There were, of course, real problems to be faced, stemming from long-established racial prejudice and discrimination which were found in various forms throughout Latin America and called for wide-ranging action by the State. It was hoped that the pace of judicial reform would soon accelerate as a result of decisions handed down by the Constitutional Court.

19. In addition, substantial progress had been made in the work of the State, departmental and regional consultative bodies which collaborated with the Black and indigenous communities in the development and implementation of national programmes; they had already had a decisive impact in roughly 30 per cent of the departments. Such efforts represented a first step towards implementing Law No. 70 of 1993. The consultation process also served

to identify long-term policy guidelines. In that connection, Law No. 70 sought to ensure that the requisite investment in the Black communities took into account the potential for development based on specific local cultural features. It was hoped that local communities would increasingly be able to use their own resources for social development purposes based on their own cultural aspirations. Such an approach could perhaps be adopted throughout Latin America.

20. Mr. de GOUTTES said that the far-reaching constitutional, legislative and institutional reforms reported by Colombia placed that country in the forefront of the struggle against acts of racial discrimination. The report itself, however, was mainly a catalogue of texts and programmes, saying little about actual situations and problems; moreover, a number of questions raised during consideration of the fifth periodic report had not been adequately answered. For example, Amnesty International and other organizations stressed the continued violence by military forces, paramilitary groups and guerrilleros, whose victims ranged from rural smallholders to street children and, in some cases, human rights activists. More information was needed about the Government's efforts to put an end to that situation. The persistence of traditional social and cultural discrimination was another cause for concern, and a report by the Andean Commission of Jurists referred to the problems of marginalization, illiteracy and infant mortality and the persistence of endemic diseases and epidemics. Information on such matters would be welcome. Likewise unanswered - with reference to article 4 of the Convention - was the question whether the dissemination of racist ideologies was subject to specific criminal penalties. Although the current report contained a list of judgements relating to the protection of the rights of the Amerindian peoples and Afro-Colombian communities, the Committee needed more information about the facts of those cases. Lastly, in connection with paragraphs 50 and 58 of the report, he requested further information on the scope of the judicial and administrative functions assigned to the indigenous communities.

21. Mr. van BOVEN noted that the seventh periodic report contained a wealth of information on legal provisions, institutions and programmes, but was short on factual data. He hoped that that deficiency would be remedied in the replies to questions. Under article 2 of the Convention, substantial information was provided on policies and legislation to protect the rights of the Black and indigenous communities. On the subject of the exploitation of natural resources in the indigenous territories, referred to in paragraph 49, he wished to know who had the right to exploit those resources and what were the rights of the indigenous communities in that regard. The statement that "the Government shall encourage the participation of the representatives of the communities concerned in decisions adopted relating to such exploitation" did not go far enough; what was being done to ensure effective participation? On the question of autonomy dealt with in paragraphs 50 and 51, he asked what was meant by "partial" implementation of the principle of participation and pluralistic democracy. In connection with the establishment of a special electoral district for the indigenous communities, referred to in paragraph 52, he asked whether there was a similar special provision for the Black communities with regard to article 3 of the Convention, he drew attention to the Committee's general recommendation XIX (47) on the

interpretation of that article, which was of continuing relevance to all forms of racial and ethnic segregation, whether deliberate or unintentional, and he hoped that that issue would be addressed in future reports.

22. The information provided under article 4 of the Convention was not really relevant to the mandatory provisions of that article. In its concluding observations concerning the fifth periodic report of Colombia, the Committee had reiterated its concern that article 4 was not properly reflected in the national penal law, and that comment must now be repeated.

23. It was regrettable that the report contained no information on the implementation of article 5 (b) on the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution. The situation in Colombia continued to be characterized by serious violations of that right, especially with regard to the indigenous populations. As an example of many reported incidents, he quoted a 1995 report of the Colombia Human Rights Committee, concerning murders by paramilitary groups in the Uraba region, the victims being primarily grass-roots leaders, including indigenous peoples and Afro-Colombians. The same report referred to the disappearance of Wilson José Caceres Gonzales, a well-known peasant leader and mayoral candidate in Savana de Torres, to the existence of a death list issued by the Peasant Farmer Self-Defence Groups of Colombia (ACC), and to evidence of other ACC paramilitary activities in the area. The concern expressed by the Committee in its previous concluding observations about ongoing violence and the apparent inadequacy of the measures taken to protect citizens, especially members of the indigenous population, was still relevant and called for comment.

24. In connection with article 5 (e) of the Convention, he reiterated the comment in the previous concluding observations that the report lacked information on the actual economic, social and educational situation of the indigenous population. That applied also to the Black community. Although paragraphs 96-98 of the report quoted constitutional and legal provisions, more factual information was needed on such matters as the level of unemployment in the indigenous and Black communities and the extent of their entitlement to health care and other services.

25. In connection with article 6, while he noted with interest the long list of judgements contained in paragraph 108 of the report, more information was needed about the nature of judicial decisions and developments. The Committee's previous question about whether international instruments could be invoked before the courts in Colombia had gone unanswered and called for a reply. Information was also required on the right to seek just reparation or satisfaction for any damage suffered as a result of discrimination.

26. When Colombia's previous report had been considered, the Committee had asked whether Colombia envisaged making the declaration provided for under article 14 of the Convention and had been assured by the representative that a reply would be forthcoming in the next report. Such a declaration would be consistent with Colombia's ratification of the Optional Protocol to the International Covenant on Civil and Political Rights. He also drew attention to the amendment to article 8 of the Convention concerning the financing of

the Committee from the regular budget of the United Nations. The amendment had been endorsed by the General Assembly but required ratification by a two-thirds majority of States parties in order to enter into force. He hoped that Colombia could accept the amendment.

27. Mr. VALENCIA RODRIGUEZ said that the seventh periodic report of Colombia demonstrated in exemplary manner the measures that could be taken to protect socially and economically disadvantaged minority groups. The new Constitution represented a breakthrough in the recognition and promotion of legal, social and political equality for all, including the Black and indigenous communities. Article 10 of the Constitution, which recognized the right of ethnic groups to have their languages and dialects recognized as official in their respective territories and the right to bilingual education, was especially commendable. Implementation of those and other rights listed under paragraph 13 of the report would call for long-term, coordinated action by all State bodies and the involvement of the people at large. He welcomed the establishment of the new Ministry of the Interior, replacing the former Ministerio de Gobierno, which should lead to improved coordination and administrative control.

28. Regarding the protection of the rights of Black communities, Law No. 70, was intended, inter alia, to regulate the de facto occupation by Black communities of lands in rural areas adjoining the rivers of the Pacific Basin. The process of establishment of title to lands would obviously take time, but he wished to know whether it had given rise to social or economic problems and, if so, who had felt affected by them and how they had been resolved. He was curious about the response of the Black communities to the measures taken to guarantee their participation in mechanisms and bodies set up to promote their fundamental rights, and he asked what progress had been made in the activities of the study commission established to draw up a development plan for the Black communities.

29. With reference to Decrees Nos. 1088 and 1809 of 1993, which regulated the right of indigenous communities to govern themselves according to their traditions and customs, he pointed to the stipulation in article 246 of the Constitution that the jurisdictional functions assigned to indigenous communities were to be exercised within their territorial boundaries in accordance with their own laws and procedures so long as the latter were not contrary to the Constitution or the laws of the Republic. He asked how that provision had been applied in practice and whether there had been any cases of conflict between the exercise of that jurisdiction and constitutional and legal provisions. With regard to the political representation and legal protection of the indigenous communities, he asked to what extent the provisions of article 171 of the Constitution and the processes referred to in paragraph 52 of the report had been put into effect. He also requested information on reports of recent political assassinations and other violations of the rights of indigenous communities.

30. It would be useful for the Committee to receive further clarification of the features which distinguished the resguardos or indigenous territories from indigenous reservations in other countries and of their contribution to social mobility and the defence of collective land ownership.

31. Paragraphs 73-85 described various legal provisions designed to ensure compliance with article 4 of the Convention, but Law No. 130 appeared to apply specifically to electoral activities. Further information was therefore needed on the provisions of the draft Bill to regulate the constitution and activities of civil organizations, referred to in paragraph 77. With regard to the dissemination of ideas based on racial hatred, the measures reported in paragraphs 78-85 fell somewhat short of the broad requirements of article 4 (a) of the Convention. The Government might therefore wish to review its legislation and take due account of the views expressed by the Committee on several occasions, as reflected in General Recommendation XV. The information provided on the implementation of article 5 of the Convention was satisfactory, and the details concerning available remedies, in paragraph 104 of the report, satisfied the requirements of article 6. The list of judgements handed down in cases involving the Amerindian peoples and the Afro-Colombian communities showed that there was a collective awareness among those groups of the nature and scope of their rights and the opportunities for seeking redress. However, a summary of the sentences imposed could facilitate understanding of the disputes involved and the scope of the judgements.

32. With regard to article 7 of the Convention, he particularly commended the activities carried out under the National Education for Democracy Project, the project on consolidation of the machinery for protection and defence of human rights at the local level and the Ethnic Education Programme, and he requested details of any international cooperation component in these activities.

33. Mrs. SADIQ ALI asked whether any progress had been made with regard to the concerns expressed by the indigenous peoples of the river Sinu about the planned expansion of the Urra power station, which would involve the flooding of part of their territory. She noted that a judge had ruled against the extraction of gold in the Guainía reservation (resguardo), where many indigenous people lived, yet gold dredging had increased, with the result that the water in the territory had been contaminated. She asked whether any action on the matter was contemplated. There had been an alarming proliferation of paramilitary groups in the service of landowners and drug traffickers. As a result, the recovery of lands for indigenous and peasant communities had met with strong opposition and indigenous leaders had been killed. In March 1994, four Zenu leaders from the San Andrés de Sotavento reservation had been removed from a bus by a group of uniformed people and killed.

34. The survival of the Nukak, the last hunter-gatherer people in Colombia, was under serious threat, despite an urgent appeal by the National Indigenous Organization of Colombia (ONIC) to the United Nations in July 1993 calling for their rights to be guaranteed. Since then their situation had been aggravated by the invasion of colonists, with a resulting increase in fatal diseases. The legal framework for creating a reservation for the Nukak had been in place since November 1992, but as far as she knew the requisite action had not been taken.

35. The United Nations Special Rapporteur on Extra-legal, Arbitrary and Summary Executions, after visiting Colombia in 1994, had addressed 40 urgent appeals - a record - to the Government regarding persons whose human rights

had been imperilled. Moreover, the National Police had the world's worst human rights record amongst security agencies in the year ending April 1994. Training should be given to law enforcement agencies to prevent further abuses.

36. Mr. CHIGOVERA said that Colombia possessed an impressive body of laws, copies of which were freely obtainable in the country. That was to be commended. The report, however, lacked information on how those laws were implemented; the same had been true of Colombia's previous report. In a country where 25,000 murders had taken place in 1995, and where there were numerous allegations of torture and intimidation, the suspicion must be that the laws were not implemented, particularly where minority groups were concerned. He recognized that a state of emergency had existed for 38 of the past 46 years. It was also the case, however, that the Constitution provided for a separate military justice system. Both the military and the police enjoyed institutionalized impunity, and there was no evidence that the politicians intended to end that state of affairs. He was concerned that the country's leaders seemed to suffer from a lack of will to stop the killings, and he wondered how Colombia intended to implement its admirable legislation for the protection of all citizens.

37. Turning to specific points, he asked how the "right to own private property", referred to in paragraph 93 of the report, was reconciled with the "right of recognition of the collective ownership of uncultivated lands occupied by Black communities", mentioned in paragraph 13 (p). Secondly, he asked what was meant by the constitutional provision, referred to in paragraph 96 (b), to the effect that workers should have the benefit of the doubt in implementing and interpreting the formal sources of the law in the context of labour disputes, and that realities should take precedence over the formalities established by the parties in the field of labour relations. Lastly, with regard to the right to decent housing, mentioned in paragraph 101, he asked whether citizens could take action against the State for not providing such housing.

38. Mr. LECHUGA HEVIA drew attention to a number of statistics indicating that the indigenous and Afro-Colombian communities were subject to discrimination. For example, 44 per cent of the indigenous population were illiterate - four times the national average. Infant mortality rates were very high, life expectancy, at 54, was some 15 years lower than the national average and the percentages of those receiving primary and secondary education were very low. The problems were not new, but it was a vast task to resolve them through legislation. Another major problem was violence: it appeared that there had been 50 political assassinations in the past year, not to mention other crimes. He wondered what measures the Government intended to take to prevent abuses by law enforcement agencies which enjoyed impunity. The next report should also present a breakdown of the situation of Afro-Colombians, indigenous people and others in relation to access to work, health, education and other aspects of life. That would provide the Committee with a sounder basis on which to assess Colombia's reports. Lastly, in relation to article 4, he asked whether racist propaganda had been declared illegal and whether racist organizations existed.

39. Mr. YUTZIS said that the report's main drawback was the lack of basic demographic information. Clearly it was often difficult to collect such information and sometimes the methods of doing so were faulty; but it would have been useful if, for example, the tables given in paragraph 33 of document HRI/CORE/1/Add.56, on the rate of unemployment, had indicated some kind of social breakdown, if not necessarily a racial one. He was puzzled by the distinction made in those tables between the unemployed and the inactive population. Colombia should include some kind of demographic map in its next report.

40. The distribution of land was also an important issue, yet the Committee had too little information to go on. For example, a case was currently being heard regarding a petroleum company's licence to exploit an indigenous territory, but the facts of the case were not clear. The Committee could not deal properly with the report because the figures had not been made available. He was impressed by the Programme of Support and Ethnic Strengthening on Behalf of the Indigenous Peoples of Colombia 1995-1998, although it did not fulfil all the requirements of article 4 of the Convention.

41. The CHAIRMAN, speaking as a member of the Committee, said he had three questions to ask. First, he wished to know whether, since there had been allegations that the rights of indigenous peoples had been violated by men in uniform, police and soldiers were subject to the same laws as civilians in conflict situations and, if not, whether the Government was satisfied that the law was properly applied when there were allegations of police or army misconduct. Secondly, he asked whether it was a defence in law for a soldier to say that he was acting under orders when he was responsible for what would otherwise be an unlawful killing. Thirdly, he asked how often investigations were carried out on the issue of unlawful orders to the military and the police.

ORGANIZATION OF WORK (continued)

42. The CHAIRMAN informed the Committee of recommendations arising from the meeting of the Bureau earlier that afternoon. Regarding the conditions under which members of the Secretariat could address the Committee, and bearing in mind the need for advance notice and coordination in that respect, it had been decided that Mr. de Gouttes should act as coordinator on the subject. Mr. de Gouttes could have a private meeting with the High Commissioner for Human Rights at which he might reach an understanding that could obviate the need for the High Commissioner to address the Committee. Lastly, Mr. Garvalov and Ms. Sadiq Ali had agreed to act as coordinators on writing a revised and fuller text concerning article 7, in pursuance of the proposal to review the implementation of that article, agreed with the Sub-Commission on Prevention of Discrimination and Protection of Minorities at the previous session.

The meeting rose at 6 p.m.